

Message Text

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PAGE 01 PORT M 00326 160422Z
ACTION EA-09

INFO OCT-01 ISO-00 CAB-05 CIAE-00 COME-00 DODE-00 DOTE-00
EB-08 INR-07 NSAE-00 FAA-00 L-03 SS-15 NSC-05 /053 W
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FM AMEMBASSY PORT MORESBY
TO SECSTATE WASHDC 2155

UNCLAS PORT MORESBY 0326

E.O. 11652: NA
TAGS: EAIR PP
SUBJ: PNG'S ACCESSION TO INTERNATIONAL AIR SERVICES TRANSIT
AGREEMENT

REF: STATE 042885

1. BELOW IS RELEVANT TEXT OF GPNG DIPLOMATIC NOTE 435/77
REFERRING TO PNG'S STATUS WITH IASTA. EMBASSY REQUESTS
STATEMENT BY DEPT IF GPNG'S NOTE SATISFIES REQUIREMENTS OF
REFTEL AND IF DEPT NOW CONSIDERS PNG BOUND TO IASTA. DEPT'S
COMMENTS ON LAST PARA OF NOTE WOULD ALSO BE APPRECIATED.

2. BEGIN QTE THE UNITED STATES DEPARTMENT OF STATE IS SAID
TO HAVE EXPRESSED THE VIEW THAT THE PAPUA NEW GUINEA DECLARA-
TION OF 16 SEPTEMBER 1975, INsofar AS IT CONCERNED PROVISIONAL
TREATY SUCCESSION, WAS NOT SUFFICIENT BASIS FOR PAPUA NEW
GUINEA TO BE CONSIDERED A SIGNATORY TO THE AIR SERVICES
TRANSIT AGREEMENT. BECAUSE OF ITS IMPLICATIONS FOR CURRENT
TREATY RELATIONS THE DEPARTMENT (DFAT) WOULD BE GRATEFUL FOR
SOME CLARIFICATION OF THAT VIEW, AND, ACCORDINGLY, TAKES THE
LIBERTY OF SETTING OUT ITS OWN VIEW OF THE MATTER. UNDER
ITS TREATY SUCCESSION DECLARATION OF 16TH SEPTEMBER 1975
THE PAPUA NEW GUINEA GOVERNMENT STATED THAT DURING A
SPECIFIED PERIOD OF EXAMINATION IT WOULD "ON A BSIS OF
RECIPROCITY, ACCEPT ALL TREATY RIGHTS AND OBLIGATIONS
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ACCRUING AND ARISING UNDER TREATIES PREVIOUSLY APPLICABLE".
IN THE VIEW OF THE DEPARTMENT (DFAT) THE EFFECT OF THAT PROVISIONAL
DECLARATION DEPENDS ON THE ATTITUDE THERETO OF THE OTHER
PARTY OR PARTIES. THE DEPARTMENT (DFAT) DOES NOT TAKE THE VIEW
THAT THE DECLARATION HAS THE EFFECT OF ESTABLISHING UNI-
LATERALLY A PROVISIONAL TREATY RELATIONSHIP. THE DEPT (DFAT)
ALSO TAKES THE VIEW THAT IN THE CASE OF TREATIES TO WHICH

SUCCESSION WOULD NOT BE POSSIBLE THE DECLARATION AS TO
PROVISIONAL SUCCESSION WOULD HAVE NO APPLICATION.

WITH REGARD TO MULTILATERAL TREATIES THE DEPARTMENT (DFAT) DOES
NOT TAKE THE VIEW THAT PAPUA NEW GUINEA SHOULD BE CONSIDERED A
SIGNATORY TO A MULTILATERAL TREATY APPLIED TO ITS TERRITORY
BEFORE INDEPENDENCE MERELY ON THE BASIS OF ITS DECLARATION
AS TO PROVISIONAL SUCCESSION. THE DEPARTMENT (DFAT) TAKES THE
VIEW THAT, UNLESS THE MULTILATERAL TREATY IS ONE OF A KIND THAT
MAY NOT BE SUCCEEDED TO, THE DECLARATION AS TO PROVISIONAL
APPLICATION IS AN INVITATION TO EACH OTHER PARTY TO THE
MULTILATERAL TREATY TO APPLY IT PROVISIONALLY BETWEEN ITSELF
AND PAPUA NEW GUINEA ON A BILATERAL BASIS. REFERENCE IS MADE
TO THE REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE
WORK OF ITS 26TH SESSION AND IN PARTICULAR TO THE COMMISSION'S
NOTE (3) TO ARTICLE 26 OF THE DRAFT ARTICLES ON SUCCESSION
OF STATES IN RESPECT OF TREATIES (RECORDS OF 29TH SESSION OF
GENERAL ASSEMBLY: SUPPLEMENT NUMBER 10 A/9610/REV. 1 PAGE 85).

ON THAT BASIS THE PAPUA NEW GUINEA GOVERNMENT WOULD HAVE BEEN
PREPARED TO TREAT THE AIR SERVICES TRANSIT AGREEMENT AS
PROVISIONALLY APPLYING BETWEEN PAPUA NEW GUINEA AND THE
UNITED STATES OF AMERICA ON A BILATERAL BASIS. THE DEPARTMENT
(DFAT) NOW UNDERSTANDS THAT THE UNITED STATES GOVERNMENT TAKES
THE VIEW THAT THIS COURSE IS EITHER NOT OPEN OR IS NOT TO BE
FOLLOWED. IT MAY BE THAT THE VIEW WAS TAKEN THAT THE AIR
SERVICES TRANSIT AGREEMENT COULD NOT BE PROVISIONALLY APPLIED
UNLESS BOTH STATES CONCERNED WERE PARTIES TO THE CHICAGO
CONVENTION OF 1944, BUT IN THAT CONNECTION ATTENTION IS
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DRAWN TO THE FACT THAT PAPUA NEW GUINEA BECAME A PARTY TO
THE CHICAGO CNVENTION ON 14TH JANUARY 1976.

THE DEPARTMENT (DFAT) WOULD BE GRATEFUL IF THE EMBASSY COULD
CONFIRM THAT THE ATTITUDE OF THE UNITED STATES GOVERNMENT HAS
BEEN CORRECTLY UNDERSTOOD WITH REGARD TO THE AIR SERVICES
TRANSIT AGREEMENT. THE DEPARTMENT (DFAT) ALSO SEEKS TO BE
INFORMED AS TO WHETHER THE SAME ATTITUDE EXTENDS TO ALL OTHER
TREATIES WHICH, IN THE VIEW OF THE DEPARTMENT, MIGHT OTHERWISE
BE TREATED AS PROVISIONALLY APPLYING BETWEEN PAPUA NEW GUINEA
AND THE UNITED STATES OF AMERICA. END QTE.
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Copy: SINGLE
Sent Date: 15-Mar-1977 12:00:00 am
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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
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